IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5424 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

TUSHARKUMAR KHIMJI VAGHANI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5424 of 2002

MR IS SUPEHIA for Petitioner No. 1

MR DABHI, Ld. AGP for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 05/02/2003

ORAL JUDGEMENT

1. Rule. Mr.Dabhi, learned AGP waives service of

notice of rule on behalf of the respondents.

2. With the consent of the parties the matter is taken up for final hearing today.

3. Having heard Mr.Supehia, learned Counsel for the petitioner and Mr.Dabhi, learned AGP for the respondents, it appears that the question raised in this petition is fully covered by various decisions of this Court including the decision dated 29-1-2003 in SCA No.10021/2001, whereby the view taken is that while considering the family income for entitlement of compassionate appointment, the income of the family pension is required to be excluded. There is no dispute on the point that the income of the family of the deceased employee was found to be exceeding Rs.1,500/=. However, Mr.Dabhi, learned AGP has given the details that as per the record of the government the total income comprises of Rs.1,614/=, which is the pensionable income and the pensionable income exceeds Rs.1,500/= and, therefore, the petitioner has been denied the consideration for compassionate appointment.

4. I find that no elaborate reasons are required and in view of the decision of this Court dated 29-1-2003 in SCA No.10021/2001, the decision of the authority to deny the consideration for compassionate appointment on the ground that the income of the family of the deceased employee exceeds Rs.1,500/= deserves to be quashed and set aside. In the result, the respondents are directed to consider the case of the petitioner for considering the matter for compassionate appointment and while computing the income of the family of the deceased employee, the income of the family pension shall be excluded and the application of the petitioner shall be considered. Accordingly the respondent authority shall consider the application of the petitioner for compassionate appointment in accordance with law, keeping in view the other relevant aspects and shall pass the order.

5. The petition is allowed to the aforesaid extent. Rule made absolute.

5-2-2003 (Jayant Patel, J.)

vinod